IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.2470 of 2006

Shri Mohd. Ajmal Hadis Mohammed ..Petitioner

vs.

Shri Abdul Rehman Gulam Mustafa Kuwari ..Respondents

Shri G.H.Keluskar for petitioner.
Shri R.D.Suryavanshi for respondents.

CORAM: S.B.MHASE J.
19th April, 2006

P.C.

1. Heard the learned Counsel.

2. Rule. Returnable forthwith.

3. Perused impugned order dated 16th November, 2005 passed by Joint Civil Judge, Sr.Dn., and SMFC, Bhiwandi. By this order the application filed by the petitioner on 16th November,2005 for setting aside "No W.S." order and to allow him to file the written statement was rejected. We need not ponder much upon the merits of the matter. It is brought to the notice of this Court that on an applciation dated 16th November, 2005 the plaintiff/respondent has given "no objection" for setting aside "no W.S." order. In fact, as a result of non filing of the written statement, " No W.S." order is being passed the valuable right is created in favour of the plaintiff to proceed with the suit in absence of written statement but that right is waived by giving no objection. It is

too harsh for the Court not to grant opportunity to file the written statement. Trial Court has absoslutely overlooked no objection given by the plaintiff and passed the impugned order. For these reasons the order dated 16th November, 2005 is set aside. The application dated 16th November, 2005 is hereby allowed and no W.S. order is set aside. The petitioner is hereby directed to file the written statement within a period of two weeks from today in the Trial Court. The Trial Court is directed to accept the written statement in accordance with the procedure and proceed with the hearing of the suit. Rule is made absolute in the above terms.

(S.B.MHASE J.)